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U.S. Citizenship and Immigration Services

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[redacted]

MAY 19 2004

FILE: WAC 02 202 53022 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a company that sells, installs and services security systems. It seeks to employ the beneficiary as a network systems engineer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel asserts that the complexity and specialization of the duties of the position are usually associated with the attainment of a baccalaureate degree.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support dated June 6, 2002; (3) the director's request for additional evidence; (4) counsel's letter, dated June 19, 2002, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a network systems engineer. Evidence of the

beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: installing servers and workstations using Microsoft Window NT; developing the petitioner's website; administering the petitioner's network and managing data; and functioning as the system interpreter to define user application needs. This last duty would include monitoring the system development, and training office employees in the use of the computers and software applications.

In the petitioner's response to the director's request for further evidence, the petitioner added more details to the stated duties and indicated that the beneficiary would spend 30 per cent of his work time installing servers and workstations; 20 per cent of his time developing and maintaining the petitioner's website; 20 per cent of his time analyzing fiscal requirements for the information systems department, and maintaining the performance, safety and security of the petitioner's information system hardware and software; 15 per cent of his time maintaining awareness of the latest technology, and establishing schedules and progress reports for the systems; and 15 per cent of his time training employees and monitoring the system for its functionality for end-users. The petitioner stated that the position required a professional with the breadth of knowledge and background as a network systems engineer.

The director found that the proffered position was not a specialty occupation as the duties of the position were not those of a systems engineer. The director referred to the description of computer support specialists and systems administrators in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, and determined that these positions did not require a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel reiterates that the position is that of a network systems engineer and that the duties of the position are specialized and complex.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As correctly noted by the director, the duties as described by the petitioner are not similar to that of a network systems engineer. The position appears more analogous to a computer software engineer as described in the 2004-2005 edition of the *Handbook*. The *Handbook* states the following:

> The explosive impact of computers and information technology on our everyday lives has generated a need to design and develop new computer software systems and to incorporate new

> technologies in a rapidly growing range of applications. The tasks performed by workers known as computer software engineers evolve quickly, reflecting new areas of specialization or changes in technology, as well as the preferences and practices of employers. Computer software engineers apply the principles and techniques of computer science, engineering, and mathematical analysis to the design, development, testing, and evaluation of the software and systems that enable computers to perform their many applications.

With regard to academic credentials for computer software engineers, the *Handbook* states:

> Most employers prefer to hire persons who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. Usual degree concentrations for applications software engineers are computer science or software engineering; for systems software engineers, usual concentrations are computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs.
>
> Academic programs in software engineering emphasize software and may be offered as a degree option or in conjunction with computer science degrees. . . . . Students seeking software engineering jobs enhance their employment opportunities by participating in internship or co-op programs offered through their schools. These experiences provide the students with broad knowledge and experience, making them more attractive candidates to employers. Inexperienced college graduates may be hired by large computer and consulting firms that train new hires in intensive, company-based programs. . . . For systems software engineering jobs that require workers who have a college degree, a bachelor's degree in computer science or computer information systems is typical. For systems engineering jobs that place less emphasis on workers having a computer-related degree, computer training programs leading to certification are offered by systems software vendors, including Microsoft, Novell, and Oracle.

Thus, while the *Handbook* indicates that most employers prefer to hire persons with baccalaureate degrees, there is no requirement to hire individuals with a baccalaureate degree in a specific specialty for software computer engineering jobs. A combination of a baccalaureate degree with certification can be sufficient for some employers. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other network systems engineers in similar firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its letter of support that it needed to hire a professional with the knowledge and extensive background of a network systems engineer. It appears that the petitioner has not previously employed a network system engineer. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Although the petitioner indicated on the original I-129 petition that it has 42 employees, its website only identifies fourteen individuals on its staff. Thus, the duties outlined by the petitioner appear to involve the installation and maintenance of a network system for a small in-house employee staff. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.